INTERIOR BOARD OF INDIAN APPEALS

Estate of Cyprian Buisson

53 IBIA 103 (03/18/2011)

Petitions for Reconsideration Dismissed and Denied:
53 IBIA 176

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF CYPRIAN BUISSON	)	Order Affirming Decision, as Modified, and Modifying BIA's Administrative Correction
	)	
	)	Docket No. IBIA 09-051
	)	
	)	March 18, 2011

We affirm, as modified herein, the January 26, 2009, Order Denying Reopening by Indian Probate Judge Albert C. Jones in the estate of Cyprian Buisson (Decedent), deceased Standing Rock Sioux Indian, Probate No. P000002626IP. Judge Jones' decision let stand the June 29, 2007, Order Determining Heirs and Decree of Distribution (Order Determining Heirs) entered by Indian Probate Judge P. Diane Johnson, who determined that Decedent's sole heir was his non-Indian widow, Lillian E. Urbersetzig Buisson (Lillian). Appellant Jeffrey M. McLaughlin, Sr., is Decedent's great-great-great-nephew. Appellant makes various arguments in support of his contention that Decedent's trust estate should be distributed to Decedent's Indian relatives rather than his non-Indian widow, but none of these arguments is legally or factually sufficient for us to overturn Judge Jones' Order Denying Reopening.[1] We also *sua sponte* modify an administrative correction, dated

[1] The heirs of Charles Mad Bear (a.k.a. Kenneth Brought Plenty) (deceased), another distant relative of Decedent, entered appearances before the Board that also suggest that they may be appealing from the Order Denying Reopening. Their notices of appearance were filed with the Board in April 2009, more than 30 days after the date of the Order Denying Reopening. *See* 43 C.F.R. § 4.321(a) (appeals from orders denying reopening must be filed with the Board within 30 days of the date of the order denying reopening). The last day for appealing the decision denying reopening fell on February 25, 2009. Therefore, to the extent that these heirs — Dawn M. Laundreaux, Angela L. Brought Plenty, Dustin C. Brought Plenty, Susan A. Brought Plenty, Michael L. Brought Plenty, Kendall R. Brought Plenty, and Lila Tree Top Brought Plenty — intended to join Appellant's appeal as appellants in their own rights, their appeal(s) would be untimely.

Aside from their untimeliness, the heirs also assert no error by Judge Jones. The burden rests with appellants to show that an order denying reopening is factually or legally deficient, *see Estate of Milward Wallace Ward*, 46 IBIA 5, 8 (2007), and the heirs have not met this burden.

September 17, 2007, by the Bureau of Indian Affairs (BIA) to show that Lillian is entitled to all of Decedent's estate.

Facts

This probate proceeding unfortunately has taken place far too many years after Decedent's death. According to the record, Decedent was born over 150 years ago on September 25, 1849. He died in St. Paul, Minnesota, on November 24, 1920. He was twice married, first to Elizabeth Stone, a.k.a. Libbie Stone, who preceded him in death. Thereafter, he remarried on March 26, 1913, to Lillian.[2]

According to the Title Status Report (TSR) in the record, Decedent's sole trust real property interest was a 13/756 (1.71958 percent) interest in Allotment No. 4575 that he inherited from his sister, Mary Jane Buisson Cramsie (Mary). The record does not reflect that Decedent had an Indian land allotment in his own right. Allotment No. 4575 consists of 630.63 acres located on the Standing Rock Reservation in Corson County, South Dakota. When Mary died intestate in 1915, her allotment passed in large part (90 percent) to her widower, John W. Cramsie. *See* Modification of Original Decision, Mar. 25, 1953, *In the Matter of the Estate of Mary J. Cramsie*, Probate No. 91012-15, *as modified by* Nos. 72170-20 and C-135053 (Dept. of Int.). The remaining 10 percent was divided among and passed in severely fractionated interests to her surviving siblings, including Decedent and Appellant's great-great-grandmother Louisa (a.k.a. Mary L.) Buisson McLaughlin (Louisa), and by representation to the surviving issue of those siblings who predeceased Mary. *Id*. Appraisals of the allotment were done in 1915 and again in 1920 that valued the entire allotment at $6,300 and $8,800, respectively. *Id*. In addition, the record contains a partial historical ledger for Decedent's Individual Indian Money (IIM) account in which the earliest entry is dated June 4, 1985, and reflects a balance at that time of $1,286.94; the ledger excerpt shows that this balance grew to $7,732.25 by 2006. The record does not reflect whether any portion of this account was due and owed to Decedent at the time of his death or whether it consists of post-death income.

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[2] Elsewhere, Lillian's maiden name is recorded as "Euber," *see* "Well Known River Captain Succumbs in St. Paul", St. Paul Dispatch, undated (Decedent's obituary), or "Enber," *see* "A Raft Pilot's Log," Capt. Walter A. Blair, at 238 (www.archive.org/stream/raftpilotsloghis00blai/raftpilotsloghis00blai_djvu.txt; www.celticcousins.net/scott/raftpilot6.htm). The marriage certificate, a copy of which is also in the record, states that her maiden name was Urbersetzig.

Lillian is listed on Decedent's death certificate as the "informant," presumably for certain personal history that appears on the death certificate. A river rafting history narrative states that Lillian survived Decedent, *see* "A Raft Pilot's Log" at 238, as does Decedent's obituary. The record does not reflect any additional information for Lillian, such as her birthdate or date of death.

With respect to any children that Decedent may have had, there is some conflict in the record. The river rafting narrative states, "[t]here were no children by either marriage," *see* "A Raft Pilot's Log" at 238; Decedent's obituary claims that Decedent was survived by his second wife and that he adopted three children who are not named. BIA contacted the State of Minnesota, where Decedent apparently resided during the last years of his life, to determine if Minnesota had a record of any adoptions by Decedent; the State reported that a check of its records, which date back to 1915, revealed no record of adoptions by Decedent.

BIA identified over 150 descendants of Decedent's siblings, of whom Appellant is one. These descendants were identified — with addresses, for those who were believed to be alive in 2005 — on the Data for Heirship Finding and Family History form (OHA-7 form) and on multiple sheets attached thereto. According to the OHA-7 form, Appellant is the son of Phillip H. McLaughlin, who died in 1999; Phillip was the son of Felix H. or Henry Felix McLaughlin, who died in 1937; Felix was the son of James H. McLaughlin, who died in 1916; James H. was the son of Louisa, who post-deceased her son in 1924. The estates of these ancestors have been probated by the Department of the Interior, and each died intestate. *See In the Matter of the Estate of Phillip H. McLaughlin*, IP TC 076 H 00 (Dept. of Int. Dec. 21, 2000); *Estate of Felix or Henry McLaughlin*, No. 70047-38 (Dept. of Int. Dec. 12, 1938); *Estate of Louisa McLaughlin, a.k.a. Marie or Mary L. Buisson*, No. C-218-58 (Dept. of Int. Apr. 18, 1958).[3]

BIA submitted its record for Decedent's estate, including the extensive OHA-7 form, to the Office of Hearings and Appeals (OHA) for probate in 2005. The OHA-7 form

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[3] As reflected in the decedents' probate records, Appellant's grandfather, Felix or Henry McLaughlin, inherited a 2/70 or 2.86 percent interest in Louisa's estate (Felix' father, James, predeceased Louisa, for which reason Felix inherited by representation a portion of his father's share in Louisa's estate); and Appellant's father, Phillip McLaughlin, inherited a 1/12 or 8⅓ percent interest in Felix' estate. Thus, Phillip inherited a 2/840 or 0.238 percent interest in Louisa's estate (2/70 x 1/12 = 2/840; 2 ÷ 840 = 0.00238). Phillip was a widower at the time of his death who was survived by his five children, including Appellant and Charles Mad Bear.

noted that BIA was unable to confirm the existence of a will executed by Decedent. A hearing in the estate was set for June 7, 2006, and notices were mailed to the persons identified by BIA on the OHA-7 form. Although a number of interested individuals apparently attended the hearing, including Appellant, no transcript, summary, recording, or sign-in sheet is included in the record, and Appellant and two interested parties aver that the hearing was an "informal hearing" that was not recorded.

On June 29, 2007, Judge Johnson issued her Order Determining Heirs in which she found that Decedent was survived by his widow, Lillian, and had no issue. Judge Johnson applied the law of the State of North Dakota to the distribution of Decedent's 1.71958 percent interest in Allotment No. 4575; she applied the law of the State of Minnesota to the distribution of funds in Decedent's Individual Indian Money (IIM) account. Judge Johnson determined that Decedent's widow was his sole heir under both Minnesota and North Dakota law.

The Order Determining Heirs was not sent to anyone outside of BIA.

One of Appellant's distant cousins, James T. McLaughlin (James T.),[4] apparently learned of the Order Determining Heirs and wrote to BIA to reopen Decedent's probate (petition to reopen). He contended that the individuals who attended the hearing "were never heard" or "advise[d]". He claimed, without explanation, that Judge Johnson's findings were "wrong" and "untrue," and he requested a new judge for the case. BIA transmitted the correspondence from James T. to the probate judge but did not serve any interested parties. The matter was reassigned to Judge Jones, who denied the petition to reopen because James T. did not assert any material legal or factual error in the Order Determining Heirs. Judge Jones reviewed the probate file and noted that it did "not contain any indication as to whether the hearing was attended and, if so, by whom." Order Denying Reopening at 1. He further noted that Judge Johnson found no proof of any adoptions by Decedent and that she had concluded that Decedent's estate should pass entirely to Lillian.

On January 26, 2009, the Order Denying Reopening and a copy of the petition to reopen were mailed to the descendants identified on the OHA-7 form, including Appellant. Also sent to the descendants was a Notice that advised that a decision had been entered and provided appropriate appeal instructions.

Appellant appealed from the Order Denying Reopening.

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[4] According to the OHA-7 form, James T. is a great-grandson of Louisa; the grandson of Louisa's son, Charles C. McLaughlin; and a second-cousin-once-removed to Appellant.

Discussion

We affirm the Order Denying Reopening because, despite the procedural error that occurred when the Order Determining Heirs was not mailed to any interested parties, we find no basis to conclude that Appellant was denied an opportunity to present evidence during the original hearing and no evidence that a second hearing took place from which Appellant was excluded. And even assuming Appellant was led to believe there would be a future hearing, he has presented no evidence or argument on appeal that would demonstrate that the Order Determining Heirs should be reopened, and for which a hearing might be appropriate. As we explain below, the outcome remains the same: Decedent's sole heir is his widow.[5] For this latter reason, we modify BIA's administrative correction to strike the notation that Lillian inherited 1/4 of Decedent's estate, rather than 100 percent or ALL.

1. Standard of Review

The Board reviews legal determinations and the sufficiency of the evidence de novo. *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 142 (2007). The Board has authority to correct manifest injustice or error. 43 C.F.R. § 4.318; *Estate of Levi Junnile Smith*, 49 IBIA 275, 280 (2009). Manifest error is shown where it is obvious that the wrong law has been applied or that a material fact is misstated. *Estate of Smith*, 49 IBIA at 280.

2. Standing

We take up *sua sponte* the issue of whether Appellant has standing to contest the disposition of Decedent's estate and we conclude that he does. Each of the ancestors through whom Appellant is related to Decedent has died intestate. Thus, if Appellant successfully establishes that his great-great-grandmother Louisa was an heir at law of Decedent, Appellant would be one of the successors to the interest that she would have inherited in Decedent's estate. Consequently, Appellant would be next in line to inherit a

[5] We modify the choice of law to show that Decedent's interest in Allotment No. 4575, which is located in South Dakota, passes in accordance with the law of intestacy of South Dakota, rather than the law of North Dakota. *See infra* n.11.

part of Decedent's 1.71958 percent interest in Allotment No. 4575, and Appellant's interest would come to approximately 0.000164 percent of the entire allotment.[6]

3. Due Process/Civil Rights

Appellant claims that his civil rights and due process rights were violated on June 7, 2006, when Decedent's probate was scheduled for a hearing and there was no sign-in sheet and no recording made. Appellant asserts that he attended the June 7 hearing and maintains that he and the approximately 10 other people who attended were told that it was "an **unofficial hearing** and you will be notified in the near future of an official hearing." Opening Brief at 1. Appellant then claims that he was not notified of any second hearing.[7]

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[6] We cannot determine from the record whether any trust income was due Decedent at the time of his death in 1920 for which reason we use Decedent's interest in Allotment No. 4575 to show how his interest in that asset might descend. Assuming that Decedent died without a surviving spouse or issue, assuming that Decedent was survived by one living sibling (Louisa) and four siblings (Henry, Harriet, Joseph, and Antoine) who predeceased him with issue, and applying the law of intestacy of the State of South Dakota, *see infra* n.11, Decedent's 1.71958 percent interest in Allotment No. 4575 would be divided equally among the five siblings. Therefore, Louisa would inherit 20 percent of Decedent's 1.71958 percent interest in Allotment No. 4575, which would approximate 0.344 percent of Allotment No. 4575 (0.2 x 0.0171958 = 0.00344). Appellant's grandfather, Felix, stood to inherit 2.86 percent of Louisa's 0.344 percent interest in Allotment No. 4575, which would be equal to 0.00984 percent (0.0286 x 0.00344 = 0.0000984). Appellant's father, Phillip, would potentially be entitled to 1/12 (8⅓ percent) of Felix' estate or 0.00082 percent of Allotment No. 4575 (0.0000984 x 0.08333 = 0.0000082). Finally, pursuant to the Standing Rock Heirship Act, Pub. L. No. 96-374, 94 Stat. 537 (June 17, 1980), which had become law after Felix' death but before Phillip's death, Phillip's interest in Allotment No. 4575 would be divided equally among his 5 children, including Appellant and Charles Mad Bear. Thus, Appellant and Mad Bear would be entitled to 1/5 (20 percent) of Phillip's 0.00082 percent interest in Allotment No. 4575 or approximately 0.000164 percent (0.2 x 0.0000082 = 0.00000164).

Ultimately, the total interest inherited in the allotment potentially could be greater since Louisa herself also inherited a 1.71958 percent interest in Allotment No. 4575 from Mary. But we are concerned here only with the interest in the allotment that Appellant potentially might derive directly from Decedent.

[7] Appellant apparently believes that a second hearing was, in fact, held on June 29, 2007. *See* Supp. Opening Brf. On this date, Judge Johnson issued her Order Determining Heirs.

We find no violation of Appellant's civil rights or due process. Appellant has not shown that he was denied an opportunity to testify or to present evidence. Informal probate proceedings may be held by a probate judge in lieu of a trial-type, formal hearing. 43 C.F.R. §§ 4.211, 4.213 (2006). These proceedings need not be recorded. *See id.* § 4.201 ("informal hearing" is defined as "a meeting . . . in which interested parties present relevant information on uncontested issues"). Any interested party may request a formal hearing but the request must be made before the judge renders a decision. *Id*. §§ 4.202(b), 4.213(b). Because notice of the hearing and the informal hearing itself occurred in May and June 2006, respectively, Appellant had over a year to request a formal hearing before Judge Johnson issued her decision in June 2007. There is no evidence that he did so. Moreover, even if Appellant believed, based on a statement by Judge Johnson, that a follow-up hearing would be held, he has not shown how the absence of a second hearing prejudiced him. No proffer of evidence or testimony has been made. Therefore, we conclude that Appellant has failed to demonstrate any civil rights or due process violation.

4. Merits

Appellant challenges Judge Johnson's determination that Decedent left a surviving spouse at the time of his death and argues that the law, including the Standing Rock Heirship Act, should be applied to keep Decedent's interest in Allotment No. 4575 in the family. He also alleges that Decedent may not have been Indian. We are not persuaded by Appellant's arguments.

Appellant argues that it is possible that Lillian predeceased Decedent. Appellant points out that little is known about Lillian, such as her birthdate and date of death, nor is she mentioned in Mary's probate record. Appellant's speculation is insufficient to overturn Judge Johnson's determination that Lillian was living when Decedent died. The record supports Judge Johnson's finding: Lillian is listed on Decedent's death certificate as the "informant," and the obituary notice for Decedent as well as the brief historical account of Decedent's life as a raft pilot both state that Lillian survived Decedent. The absence of more information about Lillian, such as her birth date and date of death, is irrelevant *provided* the evidence establishes that she was married to Decedent and was living at the time of his death, which it does. And this evidence is uncontroverted. Similarly, the omission of any mention of Lillian in Mary's probate records does not trouble us. Mary died intestate and Lillian, who was Mary's sister-in-law, was not entitled to be one of her heirs. Therefore, we find no reason to conclude that Lillian did not survive Decedent.

We find no evidence in the record that indicates that a second hearing was held.

Next, Appellant suggests that Decedent may have been non-Indian because "N" appears in his BIA-assigned account number, which Appellant apparently suspects may refer to "non-Indian."[8] Appellant does not explain how this argument shows error in the Order Denying Reopening, but in any event, it is the Board's understanding that "N" in the BIA-generated account number refers to an Indian who is not enrolled with a Federally recognized tribe. *See* http://www.doi.gov/ost/information/individual/statement.html.[9] In contrast, non-Indians — such as Decedent's widow — are identified with an "X" in their account numbers. *Id*.[10]

Appellant also argues that the heirship laws, including the Standing Rock Heirship Act, should be applied "in the best interests of the enrolled members of [the] Standing Rock Indian Reservation." Opening Brief at 2 (unnumbered). Until AIPRA became effective in 2006 or unless another statute applied, such as the Standing Rock Heirship Act, Congress specified that the intestacy law(s) of the state where trust land is located should be applied in the probate of trust assets of a deceased Indian. *See* 25 U.S.C. § 348 (state law shall be applied to the descent of Indian trust land). The law in effect at the time of death must be applied, not a later-enacted law. *See Estate of Kathy Ann Bull Child*, 48 IBIA 235, 238 (2009); *Estate of Samuel R. Boyd*, 43 IBIA 11, 18 (2006). The Standing Rock Heirship Act was enacted in June 1980, and therefore was not in existence at the time of Decedent's death in 1920. As for the remainder of Appellant's argument, we are bound to follow the laws set down by Congress. We may not substitute our judgment — or Appellant's judgment — in place of Congress'.[11]

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[8] According to the record, Decedent, Louisa, and Mary were full siblings; their mother, Nancy Graham Buisson, was a "half-blood Sioux." *See* testimony of Appellant's great-great-grandfather, James McLaughlin, in *Estate of Cramsie*, at 1, 2; *but see* BIA Certificates of Degree of Indian Blood for Louisa, Feb. 23, 2009, and Oct. 2, 2006, both of which show Louisa to be 4/4 Sioux Indian.

[9] A copy of this webpage has been added to the record.

[10] BIA does not maintain trust or other accounts for non-Indians per se but where, as here, a non-Indian heir is deceased or cannot be located, a temporary account must be established until an appropriate disposition can be made of the non-Indian heir's inheritance.

[11] We do note that Judge Johnson erroneously applied the law of North Dakota to determine the distribution of Decedent's interest in Allotment No. 4575. Because the allotment is located in South Dakota, South Dakota law applies to the distribution of this land. *See Estate of Mary Cecelia Red Bear*, 48 IBIA 122, 127 (2008) (where the Indian

(continued...)

Finally, we note that BIA made an administrative correction on September 17, 2007, to Decedent's probate to provide an account number for Lillian. However, this correction erred in stating that the Order Determining Heirs held that Lillian was entitled to "1/4" of Decedent's estate, which is manifest error. The Order Determining Heirs ordered the distribution of "ALL" of Decedent's trust estate to Lillian. Therefore, we *sua sponte* vacate that portion of the administrative correction that purports to reduce Lillian's share of Decedent's estate, and clarify that she is his sole heir and entitled to 100 percent or ALL of Decedent's trust estate.[12]

Conclusion

Appellant has not met his burden of showing error in the Order Denying Reopening. Therefore, we affirm. However, we modify both the Order Denying

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[11](...continued)
decedent dies intestate and prior to the effective date of the American Indian Probate Reform Act of 2004, the distribution of trust real property in the decedent's estate inventory is distributed pursuant to the laws of intestacy of the state where the real property is located). We have reviewed the law of intestacy of both states, and find that there is no material difference. Under South Dakota's law, the surviving spouse inherits all of the decedent's estate where the decedent dies intestate, without issue, and with an estate valued at less than $5,000. S.D. Rev. Code § 701(2) (1919). Based on the 1920 appraisal of $8,800, the value of Decedent's 1.71958 percent interest in the allotment was $151.32 at the time of his death ($8,800 x .0171958 = $151.32); his IIM account had a balance of $1,286.94 in 1985. Consequently, it is evident that Decedent's trust estate was well below the $5,000 threshold when he died in 1920.

To the extent that the United States held trust funds for Decedent (or that trust funds were due Decedent) at the time of his death, Judge Johnson properly applied Minnesota law to determine that Lillian is entitled to the funds because Decedent resided there at the time of his death and intangible assets, such as money, are distributed pursuant to the laws of intestacy where the decedent resided at the time of death. *Estate of Boyd*, 43 IBIA at 21. Of course, if the funds consist entirely of post-death income earned from leasing Allotment No. 4575, those funds properly belong to Lillian as her own property because she inherited all of Decedent's interest in Allotment No. 4575 at the moment of his death. *Id*. at 21-23.

[12] If BIA has reason to believe that the Order Determining Heirs is in error, the proper course is for BIA to submit a petition to reopen Decedent's estate to OHA's Probate Hearings Division. The petition must, of course, set forth the basis for seeking the correction.

Reopening and the Order Determining Heirs to the extent that both decisions reflect that Decedent's interest in Allotment No. 4575 passed pursuant to North Dakota law. The appropriate law governing the distribution of this asset is the law of South Dakota. This modification does not, however, alter the outcome: Decedent's widow remains his sole heir.

We strike that portion of BIA's September 17, 2007, administrative correction in which it misstated Lillian's share of Decedent's estate to be 1/4. As stated in the Order Determining Heirs, Lillian inherits ALL of Decedent's estate.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the January 26, 2009, Order Denying Reopening as modified herein, and strikes the reference in BIA's September 17, 2007, administrative correction to Lillian's share of Decedent's estate of "1/4".[13]

I concur:

// original signed	// original signed
Debora G. Luther	Steven K. Linscheid
Administrative Judge	Chief Administrative Judge

[13] Appellant refers to a "land valuation or appraisal #3 of 11-26-1986" for Allotment No. 4575 and asks when this appraisal becomes relevant or "take[s] effect." Opening Brief at 2-3 (unnumbered) (underscore added). We assume that Appellant is referring to the TSR, which was computer-generated in 2005 but bears a "date of examination" of November 24, 1986. The TSR also contains undated handwritten entries that show the appraised value of Allotment No. 4575 in its entirety to be $115,089.98 and the value of Decedent's approximate 1.72 percent interest in the allotment to be $1,979.06 ($115,089.98 x 0.0171958 = $1,979.06). Nothing in the TSR shows that the allotment and Decedent's interest therein were valued or appraised as of 1986; rather, it appears that the handwritten valuations were added later, presumably in 2005 when the inventory was certified. BIA ordinarily provides an estimate of the value of an Indian decedent's trust interests as part of preparing the estate for probate.